PROCEEDINGS OF THE COMMON COUNCIL
IN REGULAR SESSION
TUESDAY, MARCH 10 1981

CITY OF FORT WAYNE, INDIANA
JOURNAL OF THE PROCEEDINGS
OF THE COMMON COUNCIL

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MET IN THE COUNCIL CHAMBERS Tuesday EVENING March 10 A.D., 1981, IN Regular SESSION. PRESIDENT John Nuckols IN THE CHAIR, AND Charles W. Westerman CLERK, AT THE DESK, PRESENT THE FOLLOWING MEMBERS VIZ:

BURNS X, EISBART X, GiaQUINTA X,
NUCKOLS X, SCHMIDT, D. X, SCHMIDT, V. X,
SCHOMBURG X, STIER X, TALARICO X,
ABSENT
COUNCILMAN , , ,
, , ,

THE INVOCATION WAS GIVEN BY Reverend Vladimir Christy ~~St. John Chrysostom~~

RECEIVED REPORT FROM THE CITY CONTROLLER FOR THE MONTH OF , 19 . MOTION MADE AND CARRIED THAT REPORT BE MADE A MATTER OF RECORD AND PLACED ON FILE.

THE MINUTES OF THE LAST REGULAR February 24, 19 81
, 19 ,
SPECIAL , 19 ,
SESSION HAVING BEEN DELIVERED TO THE COUNCIL, WERE, ON MOTION, APPROVED AND PUBLISHED.

The City of Fort Wayne
Office of the Mayor

March 10, 1981

The Members of the Common Council
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Dear Council Members:

I appreciate the resolution the Council has passed regarding the numerous bills that affect this City which are now pending in the State House of Representatives and the State Senate.

However, because I favor the bill to consolidate public safety salaries with the balance of Civil City employees, I have returned the Council resolution unsigned for your further consideration.

Sincerely,

Win Moses, Jr.
Mayor

WM/dd

The City of Fort Wayne

Office of the Mayor

March 10, 1981

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City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

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Sincerely,

Win Moses, Jr.
Mayor

WM/dd

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on February 17, 1981, referred to the City Plan Commission for reconsideration a proposed ordinance designated as Bill No. Z-81-01-12 (AS AMENDED), which bill had previously been recommended by the Plan Commission on January 26, 1981, the Common Council having voted 5 to 4 not to approve this ordinance; and

WHEREAS, the City Plan Commission considered the Council's designated reasons for rejecting the proposed ordinance at the regularly scheduled meeting of February 23, 1981.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby again recommend that such proposed ordinance DO PASS for the reasons that a need has been shown for the Land Use Plan to be amended, the amendment will be in the best interest of and benefit to the area involved and of and to the City, and the amendment will not be detrimental to and does not conflict with the overall City Plan;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commsision held February 23, 1981.

Certified and signed this
27 day of February, 1981.

Dennis J. Grotrian
Secretary

The City of Fort Wayne

March 4, 1981

To: The Common Council
City of Fort Wayne

RESOLUTION
OF THE
CITY PLAN COMMISSION

BE IT HEREBY RESOLVED that the City Plan Commission recommends DO PASS for the Southtown Mall West annexation. Annexation Bill No. X-81-01-17 and Resolution No. R-81-01-16.

Certified and signed this
4th day of March, 1981

Dennis J. Grotrian

Dennis Grotrian
Secretary

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Memorandum

To Members of the Common Council Date 3/4/81

From Abe Farkas, Director, CD&P

Subject Southtown Mall West Voluntary Annexation

COPIES TO:

Common Council
John Logan
file

At the March 23, 1981 business meeting, the City Plan Commission passed a resolution recommending that the Southtown Mall West Annexation, Bill No. X-81-01-17 and Resolution No. R-81-01-18 be given a DO PASS. A copy of the Commission resolution and the annexation fiscal plan are attached for your consideration. The ordinance and annexation resolution have been returned to the Council for action.

The area to be considered for annexation is located in Wayne Township on the south side of the City. The 15.1 acres of vacant ground is adjacent to the existing Southtown Mall complex. Annexation has been proposed by the property owner to simplify the plan review process for future expansion of Southtown Mall. Annexation will also simplify service provision.

Please inform us of any meetings to discuss this annexation so that we can be available to answer your questions.

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

city plan commission

24 February 1981

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Schmidt:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946). The proposed ordinance is designated as:

Bill No. Z-81-01-22

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
24th day of February 1981

Dennis J. Grotrian
Secretary

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

city plan commission

24 February 1981

Members of the Common Council
City-County Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Schmidt:

Attached hereto is a resolution pertaining to a zoning ordinance amendment acted upon by the City Plan Commission at their meeting held February 23, 1981. In addition to the reasons outlined in the resolution, the following are additional remarks pertaining to the ordinance:

1. Bill No. Z-81-01-22

2. From R-1 to R-A

3. Intended Use: Multiple Family Development

4. Plan Commission Recommendation: DO PASS

   This ordinance received a DO PASS recommendation for the following reason:

   a. This request is a logical extension of a residential district that will permit multiple family development.

If there are any questions with regard to this ordinance, please feel free to call on us.

Respectfully submitted,

COMMUNITY DEVELOPMENT & PLANNING

Gary F. Baeten pb

Gary F. Baeten
Senior Planner

GFB:pb

AN EQUAL OPPORTUNITY EMPLOYER

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on January 27, 1981 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-81-01-22; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on February 9, 1981;

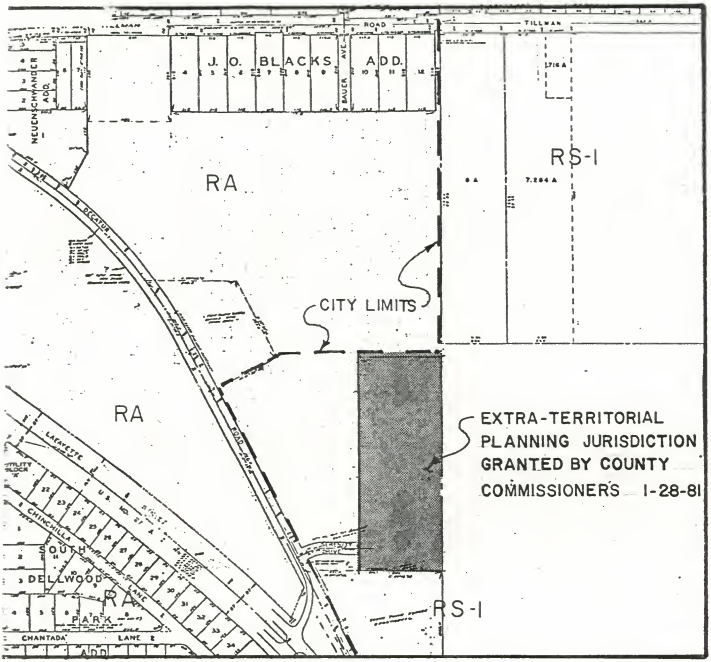
NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that such proposed ordinance DO PASS for the reasons that a need has been shown for the Land Use Plan to be amended, the amendment will be in the best interest of and benefit to the area involved and of and to the City, and the amendment will not be detrimental to and does not conflict with the overall City Plan;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held February 23, 1981.

Certified and signed this
24th day of February 1981.

Dennis J. Grotrian
Secretary



Request To Rezone From R-1 To RA

Map No. P-31

Z-81-01-22

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THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

city plan commission

23 February 1981

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Gentlemen:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946). The proposed ordinance is designated as:

Bill No. Z-81-01-10

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
24th day of February 1981.

Dennis J. Grotrian
Secretary

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

city plan commission

24 February 1981

Members of the Common Council
City-County Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Schmidt:

Attached hereto is a resolution pertaining to a zoning ordinance amendment acted upon by the City Plan Commission at their meeting held February 23, 1981. In addition to the reasons outlined in the resolution, the following are additional remarks pertaining to the ordinance:

1. Bill No. Z-81-01-10

2. From R-3 to B-1-B

3. Intended Use: Service Building for the installation of car stereos.

4. Plan Commission Recommendation: DO PASS

   This ordinance received a DO PASS recommendation for the following reason:

   a. This request is a logical extension of a commercial district.

If there are any questions with regard to this ordinance, please feel free to call on us.

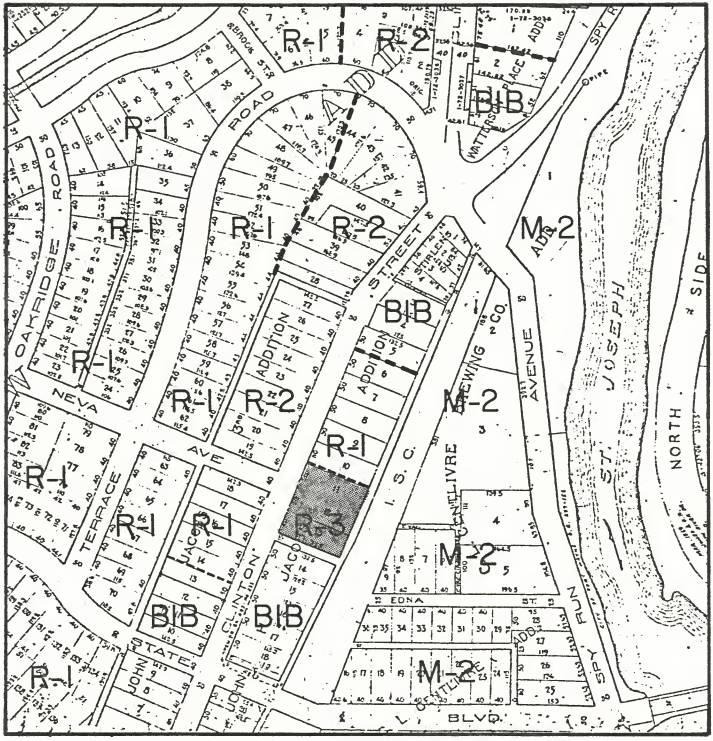
Respectfully submitted,

COMMUNITY DEVELOPMENT & PLANNING

Gary F. Baeten

Gary F. Baeten
Senior Planner

GFB:pb



REZONING CLASSIFICATION FROM AN R-3 TO BIB DISTRICT.

MAP NO. M-18

Z-81-01-10

BY G.R. LAX 12-9-80

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on January 13, 1981, referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-81-01-10; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on February 9, 1981;

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that such proposed ordinance DO PASS for the reasons that a need has been shown for the Land Use Plan to be amended, the amendment will be in the best interest of and benefit to the area involved and of and to the City, and the amendment will not be detrimental to and does not conflict with the overall City Plan;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held February 23, 1981.

Certified and signed this
24th day of February 1981.

Dennis J. Grotrian

Dennis J. Grotrian
Secretary

LEVINE & LERCH
ATTORNEYS AT LAW

STANLEY A. LEVINE
STEPHEN J. LERCH

SUITE 1111
COMMERCE BUILDING
127 WEST BERRY STREET
FORT WAYNE, INDIANA 46802
TELEPHONE (219) 422-7431

February 25, 1981

Mr. Charles Westerman
Clerk, City of Fort Wayne
City-County Building
Fort Wayne, Indiana 46802

Re: Apple Glen

Dear Mr. Westerman:

On February 24, 1981, my letter of February 23, 1981 (attached) was delivered by my secretary to your office. There was a copy of said letter addressed to you and individual copies for each of the members of the Common Council.

I am writing to you to specifically request that this letter be made a part of the minutes of the Common Council of the City of Fort Wayne.

Sincerely,

Stanley A. Levine

SAL:jm
cc: The Honorable Mark GiaQuinta,
Chairman, Regulations Committee

LEVINE & LERCH
ATTORNEYS
STANLEY A. LEVINE
STEPHEN J. LERCH

COPY

FORT WAYNE, INDIANA 46802

February 23, 1981

Common Council of the City of Fort Wayne
City-County Building
Fort Wayne, Indiana 46802

Re: Apple Glen

Dear Members of Council:

I have read with interest the letter of February 18, 1981, directed to you by Harry Scott and Douglas Miller, Mr. Bobeck's attorneys, and I have the following comments:

1. They have stated Council has violated I.C. §18-7-4-510, requiring a remand of the Apple Glen rezoning ordinance to City Plan Commission with a written statement of the reasons for rejectment. That statute on its face does not apply to rezoning ordinances. It is one of four statutes directing the procedure for adopting the "comprehensive plan and a proposed ordinance for its enforcement". (See I.C. §18-7-4-507 - 510).

2. It is only Town of Merriville v. Collins, (1978) 382 N.E. 2d 188, cited by Mr. Scott and Mr. Miller that might apply that procedure to an ordinance amending the master plan, such as the Apple Glen ordinance. As with any case law cited to you to govern a particular situation, there is a process to go through of comparing the facts of Apple Glen with the facts of Town of Merriville of researching prior and subsequent zoning decisions, including those of the Supreme Court of Indiana, as well as those of the Court of Appeals, before any lawyer can say, as Mr. Scott and Mr. Miller have, that I.C. §18-7-4-510 "is applicable without question."

3. They cite Wildwood Park Community Association v. Fort Wayne City Plan Commission, (1979) 396 N.E. 2d 678, p. 685, Footnote 11 as further support of their position that the statute, I.C. §18-7-4-510, is applicable without question. Footnote 11 starts out with a statement that City Council has the ultimate authority for approval of the master plan and ordinance, citing I.C. §18-7-5-43 (the predecessor statute to I.C. §18-7-4-510, cited in Town of Merriville), and then states:

> "Only in one rare instance defined in the above statutory language does the Plan Commission play more than an advisory role. See Town of Merriville v. Collins, (1978) 382 N.E. 2d 188. That exception is not applicable here. (Emphasis added).

4. I am quite familiar with the Wildwood decision which took three years to litigate, and which decision Wildwood Park Community Association, my client, won. You should note that before that case was litigated both Mr. Scott and the Plan Commission's then attorney, were stating that without question Apple Glen did not have to go to City Council first, and yet the Court of Appeals disagreed with Mr. Scott and stated, "We agree with Wildwood." Thus, Mr. Scott should not be the last word in zoning law on Apple Glen; nor should Mr. Doug Miller, who was one of several named remonstrators in the Wildwood case who filed suit against the Plan Commission.

5. Neither Mr. Scott nor Mr. Miller were present on February 17, 1981, when Mr. John Logan spoke on Apple Glen at your last meeting. I was, along with a tape recorder, and I would like to quote exactly what he said:

> "The law of course is clear, in my opinion, if the legislative body rejects the comprehensive plan or an ordinance amending the comprehensive plan, that it shall return that bill to the plan commission for further consideration. . . ."
>
> "The law of Indiana is very clear to me. . . ."

The point is that Mr. Logan was offering his opinion as to what Indiana law states from his application of Town of Merriville to the facts of Apple Glen. The statute, I.C. §18-7-4-510, does not apply to "an ordinance amending the comprehensive plan". Mr. Scott and Mr. Miller have offered you their opinion which, of course, is biased towards their client's wishes, and I can offer you my opinion as well.

6. In my opinion, a careful reading of a number of zoning decisions of the Indiana Court of Appeals and Supreme Court, and in particular the Wildwood Park case, as well as consideration of the fact I.C. §18-7-4-510 was passed after Town of Merriville, as

well as consideration of I.C. §18-7-4-511, which states that all amendments to the comprehensive plan (such as the Apple Glen rezoning), shall be adopted "according to the procedure set forth in I.C. §18-7-4-507(a), §18-7-4-508(a), and §18-7-4-509(a) (Note: §18-7-4-510 is not included), leads me to the conclusion that the Town of Merriville decision does not apply to Apple Glen, and that City Council does not have to return the Apple Glen ordinance to City Plan Commission.

7. What Attorney George Martin says on the subject may not be that critical as it was George Martin who first advised you in December that Apple Glen's ordinance did not have to go to the Plan Commission (as did Harry Scott) first, and then reneged and agreed with John Logan that it did have to go to the Plan Commission for a hearing on the Plan Commission's recommendation, as it was a rezoning.

8. Since I have never been included in the December meetings with the Mayor, Mr. Martin, and the attorneys for Mr. Bobeck to discuss the procedure for implementing the Wildwood Park case in which I represented the winning party, it is consistent that neither Mr. Martin or Mr. Logan have taken the time to talk to me about my views as to whether Town of Merriville applies before automatically accepting that Harry Scott is correct. Since Mr. Martin is one of the Mayor's attorneys, and the majority of City Council has voted no on Apple Glen despite his endorsement, his position is understandable. Why Mr. Logan has sided with the minority of City Council on this issue is not as easy to ascertain.

9. The bottom line is that the issue of whether Town of Merriville applies to Apple Glen is a critical one that has an impact beyond Apple Glen on many zoning ordinances, past and future, and affects the ultimate power of City Council, as elected officials, to act on rezonings.

Mr. Scott and Mr. Miller talk of depriving "all the citizens of this community of their statutory rights." The citizens of Fort Wayne, and I among them, need to have the issues raised by Mr. Miller and Mr. Scott's letter and mine, resolved. The City Council needs to know whether the statement of its ultimate power to determine the land use of the Apple Glen site so painstakingly obtained and underscored in the Wildwood decision, has been or should be undermined by one Court of Appeals decision that does not "without question" apply.

There is a question of the application of Town of Merriville that will not be answered by a letter-writing contest between the undersigned, Mr. Bobeck's attorneys, and every member of the City Attorney's staff, and indeed, the entire Bar of this county. I urge all of you to recognize that there is a legal question, and a view contrary to Mr. Scott and Mr. Miller that can be argued with equal vigor. My clients and neighbors and I worked hard to obtain the Wildwood court decision and to get the matter of Apple Glen to City Council. Council has made its decision on Apple Glen. The attempt to reverse that decision should be resisted, and City Council should go to court to obtain a declaratory judgment from a court of law to see which side is correct. To do less, would be to ignore a lot of Indiana cases, but what is more, to ignore the underlying theme of all Indiana zoning statutes, that City Council is the legislative body that has the ultimate authority to determine land use. As one who, unlike Mr. Scott and Mr. Bobeck, resides within the city limits of Fort Wayne, and with whom thousands of my fellow citizens demand that zoning ultimately be decided by elected officials, and not by an appointed plan commission, I respectfully request that you seek an answer from a court of law and not be intimidated by Mr. Scott and Mr. Miller's letter of February 18, which suggests the action of the majority of City Council somehow constitutes disobedience of the law. You must first obtain an answer as to what law is to be followed, before you can be criticized for following it or not.

Sincerely yours,

Stanley A. Levine,
Attorney for Wildwood Park
Community Association

SAL:jm
cc: Mr. John Logan
Mr. Charles Westerman, City Clerk
Mr. George Martin

THE COUNCIL THEN ADJOURNED.

CERTIFICATE

I hereby certify that I am the duly elected, acting and incumbent City Clerk of the City of Fort Wayne, Indiana and as such the custodian of the records of the Common Council of said City and that the above and foregoing is the true, full and complete record of the proceedings of the Common Council of the City of Fort Wayne, Indiana for its Regular Session, held on Tuesday the 10th day of March, 1981 that the numbered ordinances and resolutions shown therein were duly adopted by said Common Council on said date and were presented by me to the Mayor of the City of Fort Wayne and were signed and approved or disapproved by said Mayor as and on the dates shown as to each such ordinance and resolution respectively; and that all such records, proceedings, ordinances and resolutions remain on file and record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this _____ day of _____, 19____.

_____
Charles W. Westerman
City Clerk